No. 10325

In The United States
Circuit Court of Appeals
For the Ninth Circuit

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Brief of Appellant

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

HONORABLE CHARLES H. LEAVY, *Judge*

BERTIL E. JOHNSON,
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STATEMENT CONCERNING JURISDICTION

The appellant was indicted (Tr. 2) and convicted (Tr. 71 and 72) for violation of Sections 338 and 88, Title 18, United States Code. The jursidiction of the District Court is sustained by provisions of Title 28, Section 41, of the United States Code Annotated and the jurisdiction of this Court by the provisions of Title 28 Section 723 (a) United States Code Annotated and the rules promulgated by the Supreme Court of the United States pursuant thereto.

ABSTRACT OF THE CASE

The appellant and several others were charged by indictment for ten violations of the Mail Fraud Statute, two violations of the Securities Act of 1933 as amended, and the crime of consipracy to violate both the Mail Fraud Statute and the Securities Act as amended.

The jury, by its verdict, found the appellant guilty of ten counts of mail fraud violation, not guilty of two counts charging violation of the Securities Act and not guilty of conspiracy to violate the Mail Fraud Statute and the Securities Act.

In the interest of brevity the Peoples Gas and Oil Corporation will hereafter be referred to as the Corporation, the Peoples Gas and Oil Company as the Company, the Peoples Gas and Oil Development Company as the Development Company, and the Peoples Drillers, Inc., as the Drillers.

The indictment (Tr. 3) in the first ten counts charged that the defendant and eight others had devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretense, representations and promises from a class of persons whom they might induce to invest in one or more oil promotion enterprises in the States of Washington and California. That the scheme, and, or, artifice so devised was briefly as follows:

That the defendant would go to the State of Washnigton and acquire assignments to himself and others and to corporations to be organized and controlled by himself and others, of oil and gas leases in the State of Washington, would operate four inter-allied corporations—the Company, the Corporation, the Development Company, the Drillers (Tr. 4), and through them conduct a campaign for the sale of leases, collcet money from such investors, enticing them to buy by alluring, misleading and false pretenses and promises, would start and continue to drill a well, that they represented that the defendant, H. Harry Meyers (Tr. 4) was a man of standing and experience in the financial and businses world, had previous accomplishments in great public enterprises, that he had great wealth and that (Tr. 4-6) he would, out of his own personal funds, pay all expenses for drilling said well. That H. Harry Meyers was so convinced from his careful investigation of the Frenchman Hills district, that he decided to pay all drilling costs of the first oil well in said district (Tr. 6) and that he was so paying out of his own funds, all drilling expenses (Tr. 7) and would so continue until the well had been completed, and in the event the first well was not succuessful he would continue, if necessary, to drill additional wells (Tr. 7). That he, the said H. Harry Meyers, was a principal in the great engineering firm of Joseph B. Strauss and associates of San

Francisco, builders of the Golden Gate Bridge (Tr. 7) and that he was entitled to chief credit for developing and creating the great Golden Gate Bridge enterprise.

They further represented that there was an alleged advisory board of eminent geologists (Tr. 5) and petroleum engineers under whose advice they were operating, that William A. Brown was a great geologist and engineer, that there were showings of oil and/or gas encountered (Tr. 5) and that investors would be made wealthy.

It was further alleged that all of said representations were false and fraudulent, that the said H. Harry Meyers was not a principal in or connected with the engineering firm of Joseph B. Strauss and associates (Tr. 8) and was not entitled to chief credit or any credit for developing and building the Golden Gate Bridge, and that said defendant was not interested in the investors but was far more interested in the success of the selling campaign (Tr. 8).

It was further alleged that William A. Brown was not a geologist or petroleum engineer (Tr. 10) nor did he have any experience as a geologist or petroleum engineer, that no gas or oil showings were encountered (Tr. 8-10-11), that no advisory board was ever employed and that there were no encouraging findings of gas and oil (Tr. 11).

It was further alleged that as a part of said scheme and artifice the defendants would hold open meetings, at which the defendants would make public addresses, reporting splendid progress, and that since Meyers was furnishing all the money for drilling operations the enterprise would be successful, that the investment in a lease was speculative (Tr. 13) and that no one who could not afford to take a chance was not wanted and should not invest, but that the operations were so fairly conducted and the prospects so good that anyone who failed to do so ought to have their heads examined, and that such representations were not true in fact (Tr. 13).

It was further alleged that the defendants would arbitrarily raise the price of leases to induce investors to purchase the same (Tr. 14) and that by reason of such representations did induce 30,000 investors to subscribe for and purchase leases (Tr. 14), and would later induce the investors to convert their leases into stock in the Development Company, with intent to defraud them (Tr. 15).

It was further alleged that the defendants would appropriate large sums of money to their own use in the form of dividends, high salaries and commissions, and manipulate the books and records of the various corporations, and other California Corporations operated by them, in such a manner as to conceal the source of said funds (Tr. 15.)

It was further alleged that as a part of said scheme, when the collections from lease purchasers dwindled, that H. Harry Meyers would withdraw from the enterprise and disregard his promise to finish the well or wells and induce investors to become directors of the Development Company and leave the responsibility for further collection and drilling to them (Tr. 16).

It was further alleged that in furthering said scheme and artifice the Defendants caused certain letters to be deposited and delivered through the United States Mails. (Tr. 18 to Tr. 60 inc.)

The time during which these violatoins took place was alleged to be from December 5, 1935 to September 21, 1937.

Count XIII charges that the defendants conspired continuously from March 27, 1934 to on or about the 22nd day of October, 1937, to violate the Mail Fraud Statute Section 338, Title 18 United States Code and the Securities Act of 1933 as amended, as set forth in Counts I to XII, inclusive (Tr. 61 to 67).

EVIDENCE

The evidence, so far as this appeal is concerned, may be briefly stated as follows:

That prior to 1931 W. Gale Matthews, a thoroughly reputable abstractor in Ephrata, Washington, be-

lieving there was oil possibilities, because of conversations with geologists and petroleum engineers, and by reason of gas seepages in the area and production of gas in Rattlesnake Hills (Tr. 210 and 1212-1213), gathered together approximately 135,000 acres of oil leases in the Frenchman Hills area (Tr. 210-11). In 1931 Mr. Willaim A. Broome first came to Matthews in reference to the leases, and in 1932 he assigned said leases to Broome, and placed them in escrow, there being no money consideration (Tr. 211), for a consideration consisting of an over-riding royalty on all leases, and a share in production if there was production (Tr. 211). Broome spudded in a validation well and proceeded along for about a year, and then stopped, and in 1933 Matthews brought action to cancel the assignments but did not take judgment, later dismissing his action (Tr. 1216). Broome made several efforts to interest oil companies in California but met with little success, and in late 1933 he met H. Harry Meyers. Meyers had several conferences with Broome regarding the possibilities of oil and gas in the area (Tr. 1326-28), Broome representing himself to be an oil man (Tr. 1326-27), showed Meyers maps, opinions of geologists and petroleum engineers and a report by Roberts (Ex. A-30) recommending the area for development (Tr. 1327). In February, 1934 Meyers went to Seattle and discussed the matter with Gale Matthews who showed him numerous geological reports

and reports of petroleum engineers (Ex. A-169 to 178 inc.), (Tr. 212-1217-1218). He also told Meyers that he believed in the development of that region, and that there was a good possibility that the area contained oil and gas. That the structure was big, and if there was anything it was in large quantities. He told him of the investigation he had made and the literature which he had read on the subject.

Meyers assured Matthews that he would see that a fair and honest investigation of the structure was made if he made the deal, and as far as Mr. Matthews was concerned Meyers did keep his commitments and did give it a fair and honest investigation (Tr. 1216-17-1328).

After the conference with Matthews, Meyers returned to Los Angeles about the middle of March, 1934, and communicated with Mr. Markowitz and Black, and as a result plaintiff's Ex. 8 was executed about the 16th of March, 1934, as a preliminary agreement (Tr. 1329). They were to organize three companies, viz.: Peoples Gas & Oil Corporation, Peoples Gas & Oil Company, Peoples Gas & Development Company, all of which were organized. The incorporators of said companies were as follows: The corporation—William Markowitz, Samuel Markowitz, B. Blank; The Oil Company—Joshua F. Simon, A. Clayton, I. B. Toub, and the Development Company—R. M. Zeitlin, Lewis Roth and W. A. Broome.

The original capital for the conduct of the business of all three companies, $20,000.00, was furnished by Lewis Roth and H. Harry Meyers, as follows: Mr. Roth purchased a Cashier's check for $10,000.00, which was indorsed payable to the Atkins Corporation, and on the same day H. Harry Meyers gave two checks in the sum of $5,000.00 each, which were likewise deposited to the account of the Atkins Corporation. The checks were delivered to Mickey Black, who was Meyer's attorney, and the forming of the corporations was in the hands of said Mickey Black (Tr. 1329-30).

Thereafter Mr. Meyers told Mr. Markowitz that he could not devote a great deal of time to the sale of leases and it was agreed that the sale of leases was to be conducted by Markowitz, and that Broome and Meyers would undertake to drill the well.

They finally agreed that the Company should pay $65,000.00 for the 135,000 acres (Tr. 1330). The original agreement between the parties, being plaintiff's Exhibit 8, was supposed to have been destroyed by Black, which was to finish the contract and act as a rescision, and under the new arrangement Meyers was to dig the well at an estimated price of $175,000.00, through the Development Company, and the leases were to be sold by the Company and the Company was to pay to the Development Company $65,000.00 for the leases (Tr. 1330-31).

Meyers thereafter had no control or anything to do with the books or accounts of the oil company or the corporation (Tr. 1334).

Shortly thereafter defendant Joshua Simons went to Denver, Colorado, where he purchased a Standard Cable Drilling Rig, which was installed at the well, and later was supplemented with a Heavy Duty Rotary Rig. The cost of this equipment was credited to the $65,000.00 note given for the purchase of the leases. The equipment used in the drilling operations was first class equipment and the best that could be obtained for the drilling operations (Tr. 452). The crew was competent and everybody gave his best effort in drilling the well (Tr. 452), and the well was drilled to a depth of 4,575 feet.

Many leases were sold by the Company to investors and it was soon discovered that leases were an awkward form of investment, because of the title involved and if the owner of a lease died it was necessary to probate his estate to clear the title, all of which entailed expense disproportionate to the cost of the lease, and to meet these objections, and upon the advice of Dwight Hartman, a reputable practicing attorney in the city of Seattle, it was decided that the Development Company increase its stock from 640 shares at $1.00 par value stock, to one and one-half million shares of non-par value, and the stock was then offered in exchange for leases on

the ratio of 8 shares of stock for each acre, and practically all of the leases were converted into stock in the Development Company (Tr. 1223).

H. Harry Meyers and W. A. Broome organized the Peoples Drillers, Inc., in order to continue the drilling of the well, and the Development Company then conveyed the drilling equipment and well-site to the Drillers, and Meyers and Broome surrendered all of their stock in the Development Company and the drilling of the well was continued by the Drillers.

By October, 1936, there had been expended in drilling at Frenchman Hills approximately $270,000.00 (Tr. 1152), of which Meyers had paid cash of approximately $196,000.00 exclusive of the $65,000.00 due from leases (Tr. 1144-1145-1160-1169), and an agreement was entered into, by the terms of which the Development Company took over the drilling of the well, and to enable it to do this the Drillers re-conveyed the drilling equipment and well-site to the Development Company, with a proviso, however, that if the Development Company should abandon drilling operation, the Drillers should have the right to the return of the drilling equipment and well-site to continue the well. At the same time the Company assigned to the Development Company approximately $535,000.00 worth of outstanding accounts receivable from Leaseholders (Tr. 1166), and in exchange therefor the Company was

to receive a royalty of 1% of production for each $30,000.00 of the accounts which should be collected, not exceeding, however, a total royalty of 10% and a 22½% royalty theretofore held by the Development Company was reduced by that amount.

Leases were sold through the various sales offices in cities of the State of Washington and a total of 35,000 leases were sold . The Company received from the sale of leases and fees, for the period from April 7, 1934 to October 15, 1936, $1,715,176.02, out of which all expenses were paid, and the uncollected portion, in the amount of approximately $535,000.00, as of October 15, 1936, was turned over to the Development Company. The Development Company from October 15, 1936 to October 22, 1937, collected the sum of $192,708.07 (Tr. 1160).

Joshua F. Simons and Wm. Markowitz were the executive heads of the Company and the Corporation. H. Harry Meyers furnished to the Development Company and Peoples Drillers, Inc., the total sum of $196,000.00 (Tr. 1160). All of the original stock of the Development Company, before the increase in capital stock, was owned by Meyers and Broome, and the stock of the Drillers was likewise owned by Meyers and Broome.

In October of 1937, a receivership was appointed for the Corporation and the Development Company,

after indictments were returned against the defendants in the original cause.

In the course of the sales campaign, talks were given by the defendants at public and sales meetings. the defendant, H. Harry Meyers appearing, however, on only four or five occasions, the majority of the meetings having been addressed by W. A. Broome, who, incidentally, was acquitted in the first trial of this action.

Insofar as this appellant was concerned there were witnesses for the Government, most of whom had a different version of what was said concerning him, although they attended the same meetings, who testified that H. Harry Meyers was behind the drilling program, that he was a man of wealth, easily able to carry on a thorough and adequate test of the area, and that he was financing the drilling expense entirely out of his own funds; that he was one of the principals in the construction of the Golden Gate Bridge; that he was a great engineer, and that he was going to finance the Cascade Tunnel (Tr. 399-401-____).

That H. Harry Meyers was going to put down six wells (Tr. 373). Others testified that he was going to put down so many wells that the area would look like a Swiss cheese (Tr. 339-344), that he was going to finance the well if they had to go to China. That Meyers was worth 25 million dollars (Tr. 370).

That Meyers was interested in the development of the natural resources of the State of Washington, and that he wanted to secure a following so that he could promote and construct the Cascade Tunnel (Tr. 359-360).

Others testified that Meyers in his statements referred to his past experience and said that he had been instrumental in helping along bridges and things of that sort, including the Golden Gate Bridge (Tr. 360). That Meyers said that the structure looked good and he was there to finance and help develop it (Tr. 354-355). Meyers was not a good speaker and did not speak very often (Tr. 355). Meyers was one of the world's greatest bridge builders (Tr. 349). Meyers never stated that he, himself, had built any bridges, and that most of the representations made concerning Meyers were made by W. A. Broome. Several witnesses testified that the statement made concerning Meyers and the Golden Gate Bridge, was that he was connected with the Golden Gate Bridge.

Practically all of the witnesses for the Government testified that at practically every meeting Mr. Broome, or one of the other defendants, including defendant Meyers, stated: "Oil is speculative and we think this is oil. If you can't afford to speculate keep your money in your pocket." (Tr. 391, 1238.)

Some witnesses testified that a statement was made as follows: "Oil is speculative. We think this is oil. If you can't afford to speculate keep your money in your pocket, but if you wake up some morning and hear the newsboy shouting, 'Oil in Washington,' and your neighbor who speculated gets up and starts on a trip around the world, just take a couple of aspirins and go back to bed because you couldn't afford to gamble." (Tr. 310.)

Others who attended the same meetings testified that the representation made was

> "If you cannot afford to speculate or gamble, stay out." (Tr. 391-1275.)

> "That no one could tell whether or not there was oil, only the drill would tell the story." (Tr. 374.)

At every meeting it was said that "it was a speculation." (Tr. 1238.)

There was during the course of the trial a great deal of testimony concerning Meyers' connection with the Golden Gate Bridge, and the Government offered testimony by several members of the Golden Gate Bridge and Highway District that they had never seen Meyers appear before the Board or any committee up to the time that Joseph B. Strauss was appointed as engineer for the bridge (Tr. 587-665-670-676-680).

There was other testimony that his name was mentioned in a meeting of the Bridge Board after Strauss had been appointed (Tr. 680). That Meyers was seen with Strauss in the Palace Hotel during the negotiations for the selection of an engineer for the Golden Gate Bridge, and that George H. Harlan, attorney for the District, was introduced to Meyers by J. B. Strauss in February or April, 1929 (Tr. 559).

There were a number of exhibits filed of personal correspondnece between J. B. Strauss and H. Harry Meyers (Defendant's Ex. A-51-52-53-54, A-56-57-58-67 to A-105 inc.) (Agency Agreements signed by J. B. Strauss and H. Harry Meyers, Defendant's Ex. A-51-52-53-56-57 and 58). (Tr. 573 to 584 incl.).

It was conceded by the Government that Meyers had an agreement with J. B. Strauss for the securing of the contract for Strauss as Chief Engineer of said bridge and in doing other work in connection with the Golden Gate Bridge, by the terms of which Strauss was to pay Meyers for his services the sum of $220,000.00. That there was actually paid to Meyers the sum of $176,891.00, and that Meyers was finally forced to sue Strauss in the year 1934 (Tr. 1293) for payment of the money due him for such services as were rendered by H. Harry Meyers.

The Court allowed, over the objection of defendant, the Government, respondent herein, to introduce a letter, Plaintiff's Ex. 98, dated June 2, 1937 (Tr.

865-871, inc.), addressed to J. S. Swenson, Post Office Inspector, and signed by J. B. Strauss, which letter reads as follows:

"June 2, 1937

Mr. J. S. Swenson
P. O. Inspector
Post Office Department
Seattle, Washington

My dear Mr. Swenson:

Your letter of March 27 has been received. I have had so much on my hands during these last months prior to the opening of the Golden Gate Bridge to traffic that it has been impossible for me to give attention to other matters.

My connection with Meyers was an unpleasant experience which I have sought to put out of my mind. I have known him only since 1928. He had recommendations from General Goethals, whom I knew very well, and he was introduced to me at San Francisco. At that time he claimed to represent Eastern capitalists, but I have no evidence as to this other than his own statement. He was then an applicant for a private franchise for a bridge from San Francisco to Oakland. Beyond that he had apparently no business interests. The man has a pleasing personality and is a glib talker and claimed intimate acquaintance with royalty and people of prominence abroad and in the United States, most of which, in my opinion, was purely talk. Later I was informed that his birthplace was a small town in Indiana, from which he ran away at the age of thirteen to join a circus and then engaged in a patent medicine business selling pills, which seemingly is responsible for the title of "Doctor." He never attended college and holds no degree of any kind, so far as I know.

As respects the Golden Gate Bridge, my work on this project began in 1918.

I did not meet Meyers until the latter part of 1928, by which time all the preliminary work on the project had been done. I had been appointed Engineer for the Citizens' Committee organized in 1923 to promote the project and was authorized in 1924 by the Counties of San Francisco and Marin jointly to apply for a War Department permit and prepare the necessary plans, had conducted the War Department hearing, served the Citizens' Committee in all its activities, acted as expert witness in all the litigation. As a result of these activities the District as formed in the month of December, 1928.

By that time the opposition had intensified to the extent that they had organized a widespread campaign against the bridge project and myself, using every means in their power to defeat the project. Meyers, who happened to be in San Francisco in connection with certain promotional activities on a bridge to Oakland, persuaded me that he could be of great assistance as public relations counsel in off-setting the hostile propaganda, in molding public opinion and in helping the bond issue campaign in general. By reason of what I had been told and the recommendation by General Goethals, I accepted these statements at face value. That I was misled, later developments showed.

The nature of his employment by me was on a contingent basis. Had he capably performed the promised services, there is no doubt but that the compensation originally agreed upon, while considerable, would have been justified by the character of the project and its magnitude and uncertainties. Under my arrangement with him, assuming my retention as Engineer and the successful promotion of the project,

there was to become due him, according to his estimate, a sum total of $220,000. This computation was objected to by me at the time but because of the distance I had gone in the development plans and my desire for harmony, I accepted the estimate. Since then, and in view of the revelation to me of the falsity of his representations and his failure to comply with some of his promises, and his inability and failure to render services, I entered into litigation over payments becoming due. On the advice of my counsel, the litigation was settled and compromised and an agreement of settlement signed. At the time, Meyers was paid $15,000, and if he complied with the terms of said agreement, an additional sum of about twice that much is yet to be paid.

If what you tell me concerning his recent misrepresentation is correct, then Meyers has breached the settlement agreement. I am now investigating that feature and I shall appreciate your assistance in discovering the facts.

Meyers never had any contact with the Bridge District. He is in no way responsible for the conception of the project, its development, its financing or its consummation. Meyers was to offset the opposition against myself personally and my arrangement with him had nothing to do with the project proper. The opposition had tried to prevent my appointment as Engineer and had made me the target for attack.

The Golden Gate Bridge was conceived, developed and carried through by me, and until 1929, when I was appointed Chief Engineer, I received no compensation whatever and paid all costs myself, and what I have received since then will be scarcely sufficient to enable me to break even. In my opinion, Meyers did nothing for the bridge except to hurt it, and one of the

reasons for many difficulties I have had to contend with, is the association that I entered into with Meyers.

Meyers at no time had any connection, real or imaginery, with the Strauss Engineering Corporation or with Strauss & Paine, Inc. At no time that I have known him has he been possessed of any means. On the contrary, he was continually claiming to be in need of money, and it was on this basis he succeeded in extracting from me much of the money that he collected.

Meyers had the habit of painting rosy pictures of his contacts, his influence and the large amounts due him from various people and his ability to close up and secure business, none of which, in my opinion, had any foundation in fact.

Yours very truly,

JBS-m JOSEPH B. STRAUSS (Tr. 866)"

Joseph B. Strauss was not a witness at the trial.

The Government was further allowed, over the objection of the defendant, to introduce a book (Plaintiff's Ex. 95) which purported to be a report on the building of the Golden Gate Bridge, prepared by Joseph B. Strauss. This evidence was introduced for the purpose of trying to negative the representation that H. Harry Meyers was connected with the building of the Golden Gate Bridge.

During the progress of the trial the Court also permitted the witness, Troeger, to testify to transactions had by H. Harry Meyers in connection with

the Translux Company, Lux Products Company and the American Lux Products, and the transactions had with his father, Ernest A. Troeger, when H. Harry Meyers purchased an invention from Mr. Troeger Sr. All of these transactions took place in 1920, and apparently were introduced for the purpose of showing similar transactions in the organization of similar corporations as were organized in this case, and for the further purpose of attempting to show that H. Harry Meyers had defrauded John F. R. Troeger. (Tr. 899-932 inc.)

The defendant, appellant herein, produced witnesses in his defense, who testified that H. Harry Meyers was a man of means, and that he had had considerable business experience.

Mr. Hopkins, who had been an associate of Mr. Meyers for a number of years, testified that he first met Meyers in 1914, when he, Hopkins, was trying to finance a Cleveland Highway System, and Meyers was introduced to him as a man who probably could help him secure financial backing. (Tr. 1257). That he checked on Meyers and found he had access to some of the best investment associations in New York, had their confidence and was in good standing, and that Meyers introduced him to four or five investment houses, all of whom were capable of financing his project.

He further testified that Meyers knew many mi-

portant people in the United States and abroad, and that Meyers was in their confidence and was well considered. (Tr. 1258.)

In 1915 Meyers and Hopkins engaged in a manganese proposition and Meyers was the Treasurer of the Seaboard Steel, and that he was familiar with Meyer's activities in the Translux enterprise. (Tr. 1260.)

That in the financing of the U. S. Manganese and Union Manganese companies Meyers had put up between $30,000.00 and $40,000.00, and from 1917 to early in 1921 Meyers received a salary of $12,000.00 a year as Treasurer of Seaboard Steel. (Tr. 1266.)

Meyers testified that he had been interested in a number of business and financial enterprises in the United States and Europe, and that in 1914 when he left England he had cash of approximately $375,000.00. (Tr. 1314.)

That between that time and 1923 he had been interested in several enterprises including the Translux, in which he made a profit of some $150,000.00 to $200,000.00. (Tr. 1317.) In 1925 he was married and he gave to his wife, over a period of several months, the sum of $250,000.00 (Tr. 1317.)

That at the time he became interested in the development of Frenchman Hills he had in safety

deposit boxes and other securities the sum of $400,000.00. (Tr. 1340-1343.) That he expended in the drilling operations from his own funds, approximately $200,000.00.

That in 1925 he came to San Francisco and formed the New York-San Francisco Development Company, in which Judge Golden and Herbert Rothschild were also interested, for the purpose of securing a contract for the building of the San Francsico Bay-Oakland Bridge, and that his company had a permit from the War Department to build said bridge from Hunter's Point in San Francisco to High Street in Alameda. That General George M. Goethals, who was the construction engineer of the Panama Canal, was retained by his company as engineer. That the application for the San Francisco-Oakland Bridge was rejected and he had no further dealings on that particular project. (Tr. 1318-19.)

In the latter part of 1928 or the first part of 1929 he was associated with Joseph B. Strauss in securing a background for the building of the Golden Gate Bridge and securing the contract for Strauss as Chief Engineer on the project. (Tr. 1320.) That he entered into contracts with Strauss (Defendant's Exhibit A-56-57-58, Tr. 1355) the first one being March 11, 1929, by the terms of which he was to receive, should Strauss be appointed as Chief Engineer of the bridge, the sum of $220,000.00. That

Strauss was appointed as Chief Engineer and he was paid under those contracts approximately $200,000.00, and that by reason of the fact that Strauss did not pay him his fee as agreed upon, it was necessary that he bring an action against Strauss for collection on said contracts.

It was in 1935 that he retained as his attorney, Nat Schmulowitz, and as a result of said action a further agreement was entered into between Meyers and Strauss dated March 30, 1935, (being Defendant's Ex. A-180, Tr. 1296), by t he terms of which it appears that the balance owing at that time on the original $220,000.00 fee was $43,109.65, and by the terms of that agreement the said amount was to be paid off at the rate of 15% of all future installment progress payments as, if and when the same were received by Strauss from the Golden Gate Bridge and Highway Districts.

In connection here, it is well to note that George B. Harris, who actually handled the transaction as attorney for Mr. Meyers, testified that there was never any question about the services having been performed, but that the entire discussion was with reference to an accounting and the amount actually due. (Tr. 1305-1307.) Payments were made under that agreement (Defendant's Ex. A-180) in the amount of approximately $13,000.00.

In 1937 it was again necessary to institute suit

against Strauss to enforce the provisions of the agreement. (Defendant's Ex. A-180), and shortly thereafter Strauss died, and on a claim that was filed against his estate there were further payments made. (Tr. 1306.)

Meyers testified that in connection with his work on the Golden Gate Bridge he made many contacts, but most of his work was through Gavin McNab and Tom Finn. (Tr. 1320-22.) That he did work on securing sub-construction bidders (Tr. 1323) and assisted in the financing of the bridge through Rosoff. Tr. 1322-23.) That he was closely associated with Strauss during the preliminary work and the construction of the bridge. As a matter of fact the two of them had a private code (Defendant's Ex. A-65) which was used by them in their various correspondence. That he, as appears in Defendant's Ex. A-178, had contact with George H. Harlan, attorney for the District, at the request of Mr. Strauss. (Tr. 1321.)

That Defendant's Exs. A-72-75-192-178-81-87-89-93-96-100-101-102, are letters exchanged between Strauss and Meyers in reference to the Golden Gate Bridge.

There was testimony by Edgar Snider, (Tr. 1189), John B. Hartman and A. S. Alfred, that at a dinner given by Meyers in July of 1933, in reference to the proposed Cascade Tunnel, and at which Strauss was

present, that Strauss made the statement: "If it had not been for him (Meyers) the Golden Gate Bridge would never have become a reality." (Tr. 1189-1208-1210.)

With reference to Meyers' activities in the Cascade Tunnel association, there was testimony by Edgar Snider, S. A. Perkins, A. S. Alfred and John P. Hartman to the effect that as early as 1922 Meyers was interested in the development of the Cascade Tunnel and remained interested in the proposed tunnel up to the time of the indictment in this case. (Tr. 1186-88-1209-1325.)

There was submitted a statement of Meyers finances at the time he entered into the drilling operations at Frenchman Hills, showing assets of well over $400,000.00.

Meyers further testified that he at no time ever made any statement to any person that he was a millionaire or multi-millionaire, nor that he was an engineer, but did believe that at the time he entered into the drilling of the well on Frenchman Hills that he was well able to pay all of the costs of such drilling. That the highest estimate that had been given to him for the cost of drilling said well was $175,000.00, which he was willing to pay. (Tr. 1330.) That he had nothing whatever to do with the sale of the leases nor did he have any control or super-

vision over the affairs or records of the company or corporation. (Tr. 1334.)

During the progress of the trial and during the direct examination of the Government, respondent herein, there was introduced in evidence, Plaintiff's Exs. 110-G, 110-H and 110-I, being income tax returns for the years 1937 and 1938, which covered the income tax returns for a period subsequent to the return of the indictment in this case, which were certainly not material to the action and in violation of the Fifth Amendment of the Constitution.

ASSIGNMENT OF ERRORS TO BE RELIED UPON

The appellant will rely upon the following assigned errors:

No. 1 Transcript 99
No. 2 Transcript 105
No. 3 Transcript 105
No. 4 Transcript 107
No. 5 Transcript 117
No. 6 Transcript 119
No. 7 Transcript 125
No. 8 Transcript 129
No. 9 Transcript 134
No. 10 Transcript 136
No. 14 Transcript 153

ARGUMENT

The Court erred in admitting in evidence, over the objection of the defendant, plaintiff's Exhibit 98, and erred in refusing to strike the Exhibit, being plaintiff's Exhibit 98, and in not instructing the jury to disregard the contents thereof, and erred in not granting the motion for a mistrial.

Assignment of Error No. 1 (Tr. 99) and Assignment of Error No. 2 (Tr. 105) are based upon the contention that the Court erred in admitting in evidence, over the objection of the defendant that the same was incompetent by reason of being hearsay, plaintiff's Exhibit 98, and in denying the motion of the defendant to strike Exhibit 98, and in further denying the motion of the defendant that the jury be instructed to disregard plaintiff's Exhibit 98, and the further motion granting a mistrial on the grounds and for the reason that said Exhibit was incompetent by reason of being hearsay.

The testimony in reference to the Exhibit will be found at pages 865 to 871 of the Transcript and also at pages 99 to 105 inclusive of the Transcript.

At the time that the Exhibit 98 was introduced John Sparks, an auditor employed by Joseph B. Strauss, had been called as a witness by the Government on direct examination. When the Government asked Sparks to identify the signature of Joseph B. Strauss and after he had identified the signature of Joseph B. Strauss, plaintiff's Exhibit 98 was offered in evidence, as appears by the Transcript, page 870, and was admitted over the objection of the defendant on the grounds that it was incompetent and hearsay.

Plaintiff's Exhibit 98 is a letter addressed to Mr. J. S. Swenson, Post Office Inspector, dated June 2,

1937, just shortly prior to the first indictment in this cause, and, for sake of brevity, the said letter is referred to being found on page 866 of the Transcript and in the statement of the evidence in this Brief, and in which the said Strauss makes many statements of fact concerning the connection of H. Harry Meyers with the Golden Gate Bridge. It must be remembered that J. S. Swenson was not a party to this indictment; that he was one of the investigating officers; that Strauss was never called as a witness in either the first trial or the second trial of this cause, and that no opportunity whatever was afforded the defendant to be confronted by the said Joseph B. Strauss, or to have the opportunity to cross examine him. It must further be remembered that one of the principal misrepresentations alleged by the Government to have been made was that H. Harry Meyers was connected with the Golden Gate Bridge; that he was connected with the Strauss Engineering Company; that he was one of the principals of the Strauss Engineering Company and that he was connected with Joseph B. Strauss, and that the Government, in order to negative the fact that H. Harry Meyers was in any manner connected with the Golden Gate Bridge, called at least seven witnesses, to-wit: Charles W. Duncan (Tr. 875 to 880); William J. Felt (Tr. 586 to 664); George H. Harlan (Tr. 553 to 585); Thomas Maxwell (Tr. 679 to 680); Will F. Morris (Tr. 551); A. R. O'Brien (Tr. 670 to 672),

with the First and Second Assignments of Error. Assignment of Error No. 5 reads as follows:

> "The District Court erred in admitting in evidence, over the objection of the defendant on the grounds that the same was incompetent, irrelevant and hearsay, the Government's Exhibit 95, being the volume describing the history of the construction of the Golden Gate Bridge."

Said Assignment of Error is further set forth in the Assignments of Error, pages 117 to 119 inclusive of the Transcript, and the testimony in reference thereto is also found in the Transcript at page 662, 663 and 664.

Plaintiff's Exhibit 95 was a bound volume purporting to have been a report compiled under the direction of Joseph B. Strauss and was offered by the Government to negative the fact that H. Henry Meyers had any connection with the Golden Gate Bridge or with Joseph B. Strauss by reason of the fact that nowhere in the volume did Strauss mention H. Harry Meyers. The importance that the Government attached to the Exhibit, like plaintiff's Exhibit 95, is reflected in the fact that Mr. Hile in his closing argument to the jury requested the jurors to read the Exhibit and to ascertain for themselves whether or not Meyers had any connection with the Golden Gate Bridge.

Assignment of Error No. 7 reads as follows:

> "The District Court erred in admitting in

> evidence, over the objection of the defendant-appellant that the same was incompetent as hearsay, the Government's Exhibit 23, being a letter purportedly signed by Milton Hurwitz for Luther Weedin and purports to rescind a resolution previously passed by the Northwestern Gas & Oil Association."

This Assignment of Error is set forth in full in the Transcript at pages 125 to 129 inclusive. The testimony in reference to the same is set forth on pages 220 to 223 inclusive. This Assignment of Error and the above set forth Assignment of Errors 1, 2 and 5 involve the same questions of law and, therefore, will be considered and discussed together.

The letter, plaintiff's Exhibit No. 23, was a letter purportedly written by the Northwest Oil & Gas Company and signed by Luther Weedin, who was not a witness in this case, purporting to rescind a resolution dated March 19, 1934, which resolution offered the cooperation of the People's Gas & Oil Developing Company, and the letter, plaintiff's Exhibit 23, sets forth the following language:

> "It has become obvious through the repeated misrepresentations made by your agents and by the malicious practices of your officers that your conduct here is not in accord with the ethics of honest adminisration required by this association nor with the spirit of cooperation in which it is organized."

The evidence further disclosed (Tr. 223) that Milton Hurwitz composed the letter and signed the name

of Luther Weedin without submitting the letter to the said Luther Weedin for approval, and that at the time that he, Milton Hurwitz, composed the letter, he was having a dispute with the officers of the People's Gas & Oil Company about sums of money which Hurwitz claimed were due him, and certain it is that no witnesses would have been allowed to testify to the facts set forth in said letter and the opinions expressed therein.

The principal objection to Assignment of Errors 1, 2, 5 and 7 was that they were incompetent by reason of being hearsay evidence.

The rule is well settled that hearsay evidence is not admissible in evidence.

> "Hearsay evidence has been defined as that evidence which derives its value not solely from the credit to be given to the witnesses upon the stand, but in part from the veracity and competency of some other person."
>
> 20 Am. Jur. at page 403, Sec. 454.

> "The general rule is that hearsay evidence is inadmissible."
>
> 20 Am. Jur. 400, Sec. 452.

> "There are certain exceptions such as dying declarations, statements against interest, original records lost or destroyed, confessions, Res Gestae, expert or opinion evidence, and evidence to prove the age or race of an individual, and boundaries."

The evidence which was admitted in this case did not come within any of the exceptions to the rule.

The real basis for exclusion of hearsay evidence is the fact that hearsay evidence is not subject to the test which can ordinarily be applied for the ascertainment of the truth of testimony, that the declarant is not present and no opportunity for a cross examination is given.

> *Jennings v. U. S.*, 73 Fed. (2nd) 470 (C. C. A. Ga. 1935).

The general rule which excludes hearsay as evidence applies to written as well as oral statements.

> *Baltimore American Insurance Co. v. Pecas Mercantile Co.*, 122 Fed. (2nd) 143;
>
> *Union Pacific Railway Co. v. Perrine*, 267 Fed. 657;
>
> *Morris Lessee v. Vanderen*, 1 U. S. 64; 1 L. Ed. 38.

Written statemnets by persons not sworn as witnesses and subject to cross examination are inadmissible as hearsay.

> *Seals v. U. S.*, 70 Fed. (2nd) 519 (C. C. A. La. 1934).

Justice Marshall clearly set forth the reason for the hearsay rule in the case of *Mima Queen v. Hepburn*, 7 Cranch 295; 3 L. Ed. 348, in which he states at page 350 of 3 L. Ed., as follows:

> "It was very justly observed by a great judge that 'all questions upon the rules of evidence are of vast importance to all orders and decrees of men: our lives, our liberty, and our property

are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity and the good sense in which they are founded.'

"One of these rules is, that 'hearsay' evidence is in its own nature inadmissible. That this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible.

"To this rule there are some exceptions which are said to be as old as the rule itself. These are cases of pedigree, of prescription, of custom, and in some cases of boundary. There are also matters of general and public history which may be received without that full proof which is necessary for the establishment of a private fact.

"It will be necessary only to examine the principles on which these exceptions are founded to satisfy the judgment that the same principles will not justify the admission of hearsay evidence to prove a specific fact, because the eye witnesses to that fact are dead. But if other cases standing on similar principles should arise, it may well be doubted whether justice and the general policy of the law would warrant the creation of new exceptions. The danger of admitting hearsay evidence is sufficient to admonish courts of justice against lightly yielding to the introduction of fresh exceptions to an old and well-established rule: the value of which is felt and acknowledged by all.

"If the circumstance that the eye witnesses of any fact be dead should justify the introduction

> of testimony to establish that fact from hearsay, no man could feel safe in any proprety, a claim to which might be supported by proof so easily obtained."

Justice Storey, in the case of *Elliott v. Pearl*, 10 Pet. 412, 436; 9 L. Ed. 475, in discussing the question of hearsay evidence, stated as follows:

> "Besides requiring oath and cross examination, its fault is that it is peculiarly liable to be obtained by fraudulent contrivances and, above all, that it is exceedingly infirm, unsatisfactory and intrinsically weak in its nature and character."

In the case of *McCarthy Stevedoring Corporation v. Norton, et al*, 40 Fed. Supp. 957, a Dr. Morris signed a written report concerning the injury of a workman; he did not appear as a witness and his report was admitted in evidence over the objection of the plaintiff in that case, and the Court held that it was prejudicial error to admit the report on the grounds that the same was hearsay and the plaintiff was not given the right of cross examination.

In the case of *James Donnelly v. U. S.*, 228 U. S. 243, 708; 57 L. Ed. 820, 1035; 33 S. Ct. 449, 1024, Ann. Case 1913 E 710, the opinion reveals that one James Donnelly had been charged with murder and offered as a defense the confession of an Indian, Joe Dick, who, at the time of trial, was dead. The offer of the confession, however, was excluded by the District Court on the grounds that it was hearsay, and

the Supreme Court of the United States in that case held that the exclusion was proper, stating as follows:

> "Hearsay evidence, with a few well-recognized exceptions, is excluded by courts that adhere to the principles of the common law. The chief grounds of its exclusion are, that the reported dcelaration (if in fact made) is made without the sanction of an oath, with no responsibility on the part of the declarant for error or falsification, without opportunity for the court, jury, or parties to observe the demeanor and temperament of the witness, and to search his motives and test his accuracy and veracity by cross-examination, these being most important safeguards of the truth where a witness testifies in person, and as of his own knowledge; and, moreover, he who swears in court to the extrajudicial declaration does so (especially where the alleged declarant is dead) free from the embarrassment of present contradiction, and with little or no danger of successful prosecution for perjury. It is commonly recognized that this double relaxation of the ordinary safeguards must very greatly multiply the probabilities of error, and th athearsay evidence is an unsafe reliance in a court of justice."

To the same effect:

> *C. G. Lewellyn, Collector, v. Electric Reduction Co.*, 275 U. S. 243; 72 L. Ed. 68, 48 S. Ct. 63.

In the case of *Lucas v. United States*, testimony was received of a statement made by the deceased shortly before his death that he, the deceased, did not belong to the Indian country but had come from Arkansas, and was of Negro blood and not Indian blood. The

Court held that such statement was hearsay and stated as follows:

> "But we are of opinion that the evidence put in by the government on this question was not competent. It consisted of statements alleged to have been made by the deceased, in his lifetime, to leFlore, the witness, that he did not belong to the Indian country, but had come from Arkansas. Such statements do not come within any rule permitting hearsay evidence. The trial judge appears to have regarded the testimony as within the rule that declarations of deceased persons made against their interest are admissible —that as a colored man adopted in the Choctaw Nation gets benefits, rights, and privileges, a declaration made by him against that interest would be competent. It may be that, in a controversy on behalf of a deceased negro's right, or that of his representatives, to participate in the property of the nation, such admissions might be competent. But this case is not within any such rule. The object of the evidence here was not to enforce any rights or claims of the deceased against the Choctaw Nation, but was to sustain an allegation in an indictment, upon which the jurisdiction of the United State court depended."
>
> *Lucas v. U. S.*, 163 U. S. 612; 41 L. Ed. 282, 16 S. Ct. 1118.

It has been held by this Court that the testimony of a doctor to the effect that the deceased had told him of past pains and his physical condition, although such information was used to assist the doctor in the treatment of his patient, was hearsay evidence and not admissible, this Court saying:

> "Such statements of past pain, even if made

> to assist a physician to treat the patient, are generally excluded."

U. S. v. LaFavor, 96 Fed. (2) 425 (C. C. A. Wash.)

The Circuit Court of Appeals for the Fourth Circuit in a case in which the testimony of the clerk of a physician was offered to the effect that the doctor made certain statements during the physical examination of the plaintiff as to the plaintiff's physical condition, was properly excluded as hearsay.

Harris v. U. S., 70 Fed. (2) 889.

It was held that the testimony of a Superintendent that the motorman denied that the accident had occurred was hearsay, and its admission was reversible error.

Amborst v. Cincinnati Traction Co., 25 Fed. (2) 240 (C. C. A. Ohio).

In the case of *Williams vs. Great Southern Lumber Company*, 277 U. S. 19; 72 L. Ed. 761, 48 S. Ct. 417, the Supreme Court held that:

> "Statements made by another as to the purpose that the party had in coming to Williams' office made after the killing had taken place were hearsay and were not part of the res gestae and were not admissible and, upon that ground, reversed the opinion of the lower court."

It was also held that the written opinion and diagnosis made by a doctor attached to a deposition were

inadmissible and the admission of such evidence was reversible error.

> *Vicksburg & Meridian Railway v. Mary O'Brien*, 119 U. S. 99, 30 L. Ed. 299.

This Court held in the case of *Ambler v. Bloedel Donovan Lumber Mills*, 68 Fed. (2) 268 (C. C. A. Wash.) that interoffice communications between the principal and the agent, although they may have directly or indirectly related to the shipments made by the principal, were hearsay evidence and not admissible.

It has been held in a long list of cases that statements of persons since deceased were not an exception to the hearsay rule and were inadmissible.

> *Krug v. Mutual Benefit Health & Accident Ass'n.*, 120 Fed. (2) 296;
>
> *Altmayer v. Travelers' Protective Ass'n. of America*, 119 Fed. (2) 1005;
>
> *Reliance Life Insurance Co. v. Burgess*, 112 Fed. (2) 234;
>
> *Aetna Life Insurance Co. v. Quinley*, 87 Fed. (2) 732;
>
> *London Guarantee & Accident Co. v. Woelfle*, 83 Fed. (2) 325.

In *Harrison v. U. S.*, 200 Fed. 662, (CCA 6), at page 673, the Court said, in reversing a conviction in a mail fraud case involving evidence similar to the evidence admitted in this cause, as follows:

> "2. A letter from the Assistant Attorney General for the Post Office Department, written to respondent, in June, 1908, in connection with the inquiry then held, and which we have before mentioned, was offered in evidence by the government. Parts were excluded, but enough was received and read to the jury to make clear, either by express statement or by inference, that this official had decided the Easy Way Washer business to be a fraudulent, rather than a legitimate, business, unless saved from that condemnation by the offer of refunds, conditioned only on dissatisfaction, and by the prompt payment thereof. Whether the business, as evidenced by the circulars and advertising, was legitimate or fraudulent, was one of the issues for the jury; and, obviously, what the Attorney General had decided or had said on that subject was, primarily, inadmissible. It is clear, too, that the prejudice to the respondent from putting before the jury the opinion and decision of so high an officer of the government was bound to be very substantial."

In *Hart v. U. S.*, the Court said, in reversing a mail fraud conviction for similar error, the following:

> "* * * On February 2, 1914, when matters had gone very wrong with both Oneida Company and Anger Company the attorney for the Anger Company wrote Hart a letter, in which he accused Hart of a considerable number of crimes and falsehoods, and threatened that he would lay the matter before the prosecutor of New York County. Subsequently this attorney had an interview with Hart, at which there was discussion as to the accuracy of the statements of the letter. On this trial, this attorney testified as to his talk with Hart, and the letter aforesaid was admitted in evidence against Hart, as 'a statement made to him.' The reason is a novelty, and the action amounted to permitting

> a reputable member of the bar, a man of vigorous personality, substantially to make a speech, stating his very low opinion of one or more of the defendants. There is no pretense that what was said in the letter could have been repeated viva voce by the witness to the jury; yet such was its practical effect when read to the jury, the writer sitting by in the witness chair. This was grave error."

Hart v. U. S., 240 Fed. 911 (CCA 2).

In *St. Clair v. U. S.*, this court held that the admission of a letter written by the Secretary of State to the Mining Company, whose officials were charged with mail fraud, was erroneous, even though the trial Court admitted the letter solely for the purpose, as the Court instructed the jury upon its admission, of allowing the jury to consider the letter of the Secretary of State for the purpose of enabling them to understand the responses made thereto by the defendants and that they should not consider as true, as against the defendants, any statements contained in the letter written by the Secretary of State.

St. Clair v. U. S., 23 Fed. (2)d 76.

In *Nicola v. U. S.*, the Court uses the following language:

> "A letter does not prove itself. In order to make it evidence, it must be shown either to have been written by the person against whom it is produced, or by some one authorized to act in his behalf. Neither the authenticity nor genuineness of this letter was established by any evidence. Its admission was clearly erroneous,

> and unless it appears 'beyond a doubt that the improper evidence admitted did not and could not have prejudiced the rights of the party duly objecting,' a new trial should be awarded. *Sprinkle v. United States*, (C. C. A.) 150 F. 56, 59; *McGowan v. Armour*, (C. C. A.) 248 F. 676; *Sweeney v. Oil & Gas Co.*, 130 Pa. 193, 203, 18 A. 612; *Boston & Albany R. Co. v. O'Reilly*, 158 U. S. 334, 337, 15 S. Ct. 830, 39 L. Ed. 1006."

Nicola v. U. S., 72 Fed. (2d) 780 (C. C. A. 3);

Granzow v. U. S., 261 Fed. 172 (C. C. A. 8).

We most earnestly, therefore, urge that the admission of plainitff's Exhibits Nos. 23, 95 and 98, and particularly 98, was prejudicial error and were damaging items of hearsay evidence, so prejudicial that the defendant was necessarily deprived of a fair trial.

The District Court erred in admitting in evidence the testimony of Ernest A. Troeger, who was permitted to testify concerning transactions that happened from fourteen to eighteen years previous to the alleged violations of law in this case.

Assignment of Error No. 4 reads as follows:

> "The District Court erred in permitting the witness Ernest A. Troeger to testify on behalf of the Government, over the objection of the defendant that said testimony related to incidents which happened approximately fourteen years before the alleged violation of the posal laws, as set forth in the indictment; that said

testimony was incompetent, immaterial and too remote, the only purpose for said testimony, apparently, was to show a similar scheme and device."

Said Assignment of Error is found on page 107 to 117 of the Transcript and the appendix, and the testimony relating thereto at pages 909 to 921 inclusive of the Transcript.

The Government called Ernest A. Troeger as a witness in direct examination and he was allowed to testify concerning transactions had between the defendant, H. Harry Meyers, and John F. R. Troeger, the father of the witness, said transactions having taken place between the years 1919 and 1923, from fourteen to eighteen years prior to the alleged violations of law charged in the indictment.

This evidence was admitted over the objection that it was too remote in point of time and irrelevant and immaterial, as being evidence of a similar scheme. On this ground, Troeger was allowed to testify, over this continuing objection, that the defendant had represented himself to be a capitalist, that he had given Troeger's father a false promise of lifetime employment, and that he had organized three interlocking corporations which the Government contended constituted a similar scheme to defraud.

None of the foregoing portions of Troeger's testimony, which was most damaging, could have had

any place in the case except on the theory that it related to a similar scheme and was thus material on the question of intent.

The evidence was improper upon the grounds of the objection made at the time that it was too remote for this purpose.

In 80 A. L. R., 1316, numerous cases are collected on the point of the time element as affecting the admissibility of evidence of similar transactions. As appears from this note (p. 1319), in order to be "reasonably close in point of time" the similar transaction must have been within a matter of weeks or months. In *Kercheval v. U. S.*, (C. C. A. 8) 12 Fed. (2d) 904, it was held that an oil lease transfer a year aremoved from the date of the alleged fraudulnet representations was too remote and in *Clarke v. State*, (Ga.), 62 S. E. 663, a transaction three years removed was held too remote.

There can be no doubt we feel but that the Troeger transaction, ante-dating the instant situation by at least fourteen years, was improperly allowed to be brought into this case. That its admission was highly damaging to the defendant can likewise be doubted.

The District Court erred in admitting in evidence plaintiff's Exhibits 110-*G*, 110-*H and* 110-*I, being the income tax returns for the years* 1937, 1938 *and* 1939, *as set forth in Assignment of Error No.* 3.

Assignment of Error No. 3 (Tr. 105), reads as follows:

> "The District Court erred in admitting in evidence, over the objection of the defendant, the Government's Exhibits 110-R, 110-H and 110-I, being income tax returns for the years 1937, 1938 and 1939, the objection to said admission of said exhibits being on the grounds that the same were incompetent, not properly identified or authenticated and immaterial, and that it violated the constitutional rights of the defendant under the Fifth Amendment to the Constitution of the United States."

Said Assignment of Error is set forth on pages 105 to 107 inclusive of the Transcript and the appendix, and the evidence in refernece therto is found at pages 932 to 935 inclusive of the Transcript.

These exhibits were offered in evidence by the Government (plaintiff) during its direct examination and before the appellant had taken the stand and, apparently, was offered and admitted for the purpose of showing the income, or lack of income, of the defendant for the years 1937, 1938 and 1939, which was the period after the indictment herein had been returned and could not possibly have had any effect or any bearing on the issues in this case, except to attempt to prejudice the jury.

We believe that the reception in evidence, over our objection that the same was in violation of the defendant's immunity from self incrimination under the Fifth Amendment of the Constitution of the

United States, of the defendant's income tax returns for the years 1937, 1938 and 1939, constituted an infringement of defendant's constitutional rights under the Fifth Amendment and also amounted to a violation of the due process clauses of the Federal Constitution.

We admit frankly that we have found no case which squarely passes on this matter. In *Shushan v. U. S.*, (C. C. A. 5), 117 Fed. (2d) 110, 117, a similar contention was overruled by the Court. It appears from the decision in that case, however, that at the time the income tax returns which were admitted in evdience there were made out, no criminal case was pending. The Court is careful to point this out at page 117 of the opinion.

In the instant case, on the contrary, the three returns in question were made, and were required by law to be made *after* an indictment had been returned in this case and while the said indictment was pending. Under penalty of the Income Tax Laws, defendant Meyers could not, on the ground that it might tend to incriminate him, refuse to file an income tax return. *U. S. v. Sullivan*, 274 U. S., 259, 71 L. Ed. 1037.

As a consequence the defendant was required to file these income tax returns, although the indictment was pending against him and we respectfully sub-

mit that the admission in evidence of those income tax returns in this case is in violation of the constitutional rights of the defendant against self incrimination and amounts to an attempted deprivation of his liberty without due process of law in violation of the provisions of the Fifth and Fourteenth Amendments to the Federal Constitution.

The District Court erred and abuse its discretion in unduly and improperly restricting the cross examination of the witness John S. Swenson to establish his animus and bias, as set forth in defendant's Assignment of Error No. 6.

Assignment of Error No. 6 reads as follows:

> "The district Court erred and abused its discretion in unduly and improperly restricting the cross examination of the witness John S. Swenson, called on behalf of the Government, in that the Court arbitrarily refused to allow the cross examination of said witness to establish the animus and bias of the witness Swenson."

Said Assignment of Error is found at pages 119 to 125 of the Transcript and is also set forth in the appendix hereto, and the testimony appears at pages 890 to 898 inclusive of the Transcript.

We submit that the Court erred in denying us the right to attempt to show by cross-examination of Post Office Inspector Swenson, his bias and interest. The Court refused to allow us to show his fixed conviction with reference to the lack of oil in the State

of Washington, his belief that only Major Oil Company would or could honestly find oil in the State, his activity in denying interested persons a right to appear before the Grand Jury and his flouting of the direction of the Attorney General of the United States with reference to a stay of execution for defendant William Markowitz.

The Court stated that it was presumed that a public official did his duty. When we expressed the belief that this was not a presumption of law but only one of fact and that we were entitled to show the interest of the witness Swenson upon cross examination, the Court stated that we could not attack the witness in that fashion. To this we noted an exception.

We respectfully submit that in his ruling, the Court erred.

In *Alford v. U. S.*, 282 U. S. 687, 75 L. Ed. 624, the Supreme Court of the United States reversed a decision of the Circuit Court of Appeals for the Ninth Circuit which had affirmed a mail fraud conviction. The only point discussed in the opinion of the Supreme Court was the matetr of cross examination and the Supreme Court held that because the defendant was denied the right to ask a Government witness, upon cross examination, where the latter lived, the conviction should be, and was, reversed.

This case contains a complete and authoritative discussion of the right of an accused to cross examine a Government witness. We believe that it holds that where, as here, the trial Court denied us the right to inquire of a Government witness about a possible basis of a bias or prejudice, such ruling is reversible error and that it does not need to appear that, if pursued, the inquiry would have resulted favorably to the defendant.

The Court erred in rejecting defendant's Exhibits, for identification, Nos. A-122, A-123 and A-131, as set forth in defendant's Assignment of Error Nos. 8, 9 and 10.

Assignments of Error Nos. 8, 9 and 10 involve the same principal of law and will, therefore, be discussed together.

Assignment of Error No. 8 reads as follows.

> "The District Court erred in rejecting defendant's Exhibit No. A-122 for identification, said letter being dated June 23, 1934, and signed by Ward B. Blodgett, and addressed to W. A. Broome."

Said Assignment of Error is set forth on page 129 of the Transcript and the appendix hereto, and the evidence in connection therewith is found at pages 1124 to 1126 inclusive of the Transcript.

Assignment of Error No. 9 reads as follows:

> "The District Court erred in rejecting defen-

> dant's Exhibit No. A-123 for identification, being letter dated June 26, 1934, written by W. A. Broome to Ward B. Blodgett in answer to defendant's Exhibit A-122 for identification."

Said Assignment of Error is set forth on pages 134 to 136 of the Transcript and the appendix hereto, and the evidence concerning the same is found on pages 1124 to 1128 inclusive of the Transcript.

Assignment of Error No. 10 reads as follows:

> "The District Court erred in rejecting defendant's Exhibit A-131 for identification, which is a carbon copy of letter dated June 1, 1934, addressed to the witness Dwight C. Roberts, written by W. A. Broome."

Said Assignment of Error is found on pages 136 to 142 inclusive of the Transcript and the appendix hereto, and the evidence in connection therewith is found at page 1133 and 1134 of the Transcript.

These were letters written in the ordinary course of business by Mr. Ward B. Blodgett and William A. Broome, showing the fact that Blodgett was being consulted by Broome in the business of the Company and particularly that in defendant's Exhibit, for identification, No. A-123, Broome, under date of June 26, 1934, stated to Blodgett that his share of the Company had not been determined. This was most important evidence and was corroborative of defendant Meyers' tsetimony that following the execution of plaintiff's Exhibit 8 in March, 1934, there

had been an agreement changing the relations of the parties. Here, in defendant's Exhibit, for identification, No. A-123, the now deceased Broome, in a letter admittedly written in June, 1934, asserted that the matter of the arrangements between the parties was still unsettled. This was extremely important evidence for the defendant and only the Court's refusal to hear defense counsel on any of the matters of admissibility prevented us from arguing the point at greater length at the time.

Defendant's Exhibit A-131, for identification, was a letter from Broome to Dwight Roberts and had a very definite bearing on the question of a geological committee and the fact that Roberts was to be employed.

Being anxious to avoid the suggestion that we were consciously trying to evade the rulings of the Court in view of the fact the Court stated repeatedly that he did not care to hear argument from us, when he had ruled, we could do no more than to call the Court's attention to the contents of defendant's Exhibits, for identification, Nos. A-122, A-123 and A-131, and to except to the Court's refusal to admit them in evidence. Defendant's Exhibits, for identification, Nos. A-122, A-123 and A-131, were clearly admissible, having been properly identified, as being part of the Res Gestae.

Hibbard v. U. S., (C. C. A. 7) 172 Fed. 66, 70;

Harrison v. U. S., (C. C. A. 6) 200 Fed. 662, 674;

Gould v. U. S., (C. C. A. 8) 209 Fed. 730, 739;

Patterson v. U. S., (C. C. A. 6) 222 Fed. 599, 648;

Hair v. U. S., (C. C. A. 7) 240 Fed. 533, 536;

McLean v. U. S., (C. C. A. 8) 253 Fed. 694, 697;

Kleeden v. U. S., (C. C. A. 5) 45 Fed. (2d) 87, 88;

Goldstein v. U. S., (C. C. A. 8) 63 Fed. (2d) 609, 614.

The District Court erred in refusing to grant the defendant's motion for a new trial.

Assignment of Error No. 14 reads as follows:

> "The District Court erred in refusing to grant defendant-appellant's motion for a new trial. (Tr. 153)."

We submit that the errors complained of in our various Assignments of Error were all important and the admission of the evidence hereinabove discussed was highly prejudicial to the defendant and deprived him of a fair trial, and that the District Court should have granted the motion for a new trial. (Tr. 153.)

CONCLUSION

The failure of the Court to sustain the objection to the admission of the evidence above discussed in our Assignments of Error was clearly prejudicial and deprived the defendant of a fair trial.

The Exhibits, which were admitted over objection, clearly were incompetent and dealt with matters which were of vital importance to the issues of the case. They dealt with matters which were of supreme importance and which must have determined the verdict in this case.

We, therefore, respectfully submit that the judgment of the lower Court should be reversed and that a new trial be granted.

Respectfully submitted,

BERTIL E. JOHNSON,

Attorney for Appellant.

APPENDIX

ASSIGNMENT OF ERRORS
(See Index for Pages)

The appellant, H. Harry Meyers, hereby respectfully says, that in the record of the proceedings before the District Court for the Western District of Washington, Southern Division, before whom the above cause was tried, manifest errors occurred to his prejudice, and that he hereby assigns the following errors, which he avers occurred:

1. That the District Court erred in admitting in evidence, over the objection of the defendant—appellant, Government's Exhibit 98, on the ground that the same was incompetent and hearsay:

> Q. (By MR. HILE): Handing you what is marked as Government's Exhibit 98, for identification, I will ask you if you recognize Strauss's signature on that letter?
>
> A. (MR. SPARKS): Yes, that is Mr. Strauss's signature.
>
> MR. HILE: I will also offer Exhibit 98 for identification, and ask the Court to look at it.
>
> THE COURT: Any objection to 98?
>
> MR. SIMON: Yes, on the ground it is incompetent and hearsay.
>
> MR. HILE: I think at least portions of it are [1*] admissible, your Honor, if not the entire Exhibit, in connection with these other exhibits that have been put in by the defense.

THE COURT: Objection will be overruled and it will be admitted as an exhibit.

MR. SIMON: Will your Honor allow us an exception; also does your Honor appreciate to whom this letter was written and the occasion for it?

THE COURT: Yes.

MR. SIMON: I move to strike the exhibit and ask that the jury be instructed to disregard the contents thereof as hearsay, and I move for a mistrial; ask that the jury be withdrawn and a mistrial declared.

THE COURT: Motion denied.

MR. SIMON: Exception.

Exhibit 98 reads as follows:

"Joseph B. Strauss
President
Cable Address,
Bascule Chicago
A B C Code Fifth
Edition
Bentley's Code

Richard K. Strauss
Contracting Engineer

Strauss & Paine, Inc.
Consulting Engineers
111 Sutter Street
San Francisco, Calif.

Clifford E. Paine
Vice President
Bascule, Lift,
Swing and Long
Span Bridge
Designs
Investigations
Reports
Estimates
Supervision

No. 15187
Plaintiff Exhibit 98

June 2, 1937

Mr. J. S. Swenson
P. O. Inspector
Post Office Department
Seattle, Washington

My dear Mr. Swenson:

Your letter of March 27 has been received. I have [2] had so much on my hands during these last months prior to the opening of the Golden Gate Bridge to traffic that it has been impossible for me to give attention to other matters.

My connection with Meyers was an unpleasant experience which I have soguht to put out of my mind. I have known him only since 1928. He had recommendations from General Goethals whom I knew very well, and he was introduced to me at San Francisco. At that time he claimed to represent eastern capitalists, but I have no evidence as to this other than his own statement. He was then an applicant for a private franchise for a private franchise for a bridge from San Francisco to Oakland. Beyond that he had apparently no business interests. The man has a pleasing personality and is a glib talker and claimed intimate acquaintance with royalty and people of prominence abroad and in the United States, most of which, in my opinion, was purely talk. Later I was informed that his birthplace was a small town in Indiana, from which he ran away at the age of thirteen to join a circus and then engaged in a patent medicine business selling pills, which seemingly is responsible for the title of "Doctor." He never attended college and holds no degree of any kind, so far as I know.

As respects the Golden Gate Bridge, my work on this project began in 1918.

I did not meet Meyers until the latter part of 1928, by which time all the preliminary work on the project had been done. I had been appointed Engineer for the Citizens' Committee organized in 1923 to promote the project and was authorized in 1924 by the Counties of San Francisco and Marin jointly to apply for a War Department permit and prepare the necessary plans, had conducted the War Department hearing, served the Citizens' Committee in all its activities, acted [3] as expert witness in all the litigation. As a result of these activities the District was formed in the month of December, 1928.

By that time the opposition had intensified to the extent that they had organized a wide-spread campaign against the bridge project and myself, using every means in their power to defeat the project. Meyers, who happened to be in San Francisco, in connection with certain promotional activities on a bridge to Oakland, persuaded me that he could be of great assistance as public relations counsel in off setting the hostile propaganda, in molding public opinion, and in helping in the bond issue campaign in general. By reason of what I had been told and recommendation by General Goethals, I accepted these statements at face value. That I was misled, later development showed.

The nature of his employment by me was on a contingent basis. Had he capably performed the promised services there is no doubt but that the compensation originally agreed upon, while considerable, would have been justified by the character of the project and its magnitude and uncertainties. Under my arrangement with him, assuming my retention as En-

gineer and the successful promotion of the project, there was to become due him, according to his estimate, a sum total of $220,000. This computation was objected to by me at the time but because of the distance I had gone in the the development plans and my desire for harmony, I accepted the estimate. Since then, and in view of the revelation to me of the falsity of his representations and his failure to comply with some of his promises, and his inability and failure to render services, I entered into litigation over payments becoming due. On the advice of my counsel, the litigation was settled and compromised and an agreement of settlemen signed. At the time, Meyers was paid $15,000, and if he complied with the terms of said agreement, [4] an additional sum of about twice that much is yet to be paid.

If what you tell me concerning his recent misrepresentation is correct, then Meyers has breached the settlement. I am now investigating that feature and I shall appreciate your assistance in discovering the facts.

Meyers never had any contact with the Bridge District. He is in no way responsible for the conception of the project, its development, its financing or its consummation. Meyers as to offset the opposition against myself personally and my arrangment with him had nothing to do with the project proper. The opposition had tried to prevent my appointment as Engineer and had made me the target for attack.

The Golden Gate Bridge was conceived, developed and carried through by me, and until 1929, when I was appointed Chief Engineer, I received no compensation whatever and paid all costs myself, and what I have received since then will be scarcely sufficient to enable me to break even. In my opinion, Meyers did nothing for

the bridge except to hurt it, and one of the reasons for many difficulties I have had to contend with, is the association that I entered into with Meyers.

Meyers at no time had any connection, real or imaginary, with the Strauss Engineering Corporation or with Strauss & Paine, Inc. At no time that I have known him has he been possessed of any means. On the contrary, he was continually claiming to be in need of money, and it was on this basis he succeeded in extracting from me much of the money that he collected.

Meyers had the habit of painting rosy pictures of his contacts, his influence, and the large amounts due him from various people and his ability to close up and secure business, none of which, in my opinion, had any foundation in fact.

Yours very truly,

JOSEPH B. STRAUSS

JBS-m [5]

2. The District Court erred in denying the motion to strike Exhibit 98 and the motion that the jury be instructed to disregard the same; and the further motion for a mistrial as relating to the above assignment of errors.

3. The District Court erred in admitting the evidence, over the objection of the defendant, Government's Exhibits 110-G, 110-H and 110-I, being income tax returns for the years 1937, 1938 and 1939; objections to said admissions being on the grounds that the same were incompetent, not properly iden-

tified or authenticated, immaterial and violating the constitutional rights of the defendant under the fifth amendment of the Constitution of the United States.

MR. HILE: I would like to offer, your Honor, at this time authenticated copies of 110-B, I think that is the first one of the income tax returns of the defendant Meyers for 1932; 110-C for the year 1933; 110-D for the year 1934; 110-E for the year 1935; 110-F for the year 1936; 110-G for the year 1937; 110-H for the year 1938; and 110-I for the year 1939.

THE COURT: Any objection?

MR. SIMON: I have a special objection to a couple of them, your Honor.

MR. HILE: They are duly authenticated by the various departments, your Honor.

MR. SIMON: I object to them all, and to each and every one, your Honor, for the reason and upon the ground that they are not properly authenticated. And I want particularly to object to——

THE COURT: Is the authentication the same on every one of them?

MR. HILE: Yes, it is. I wouldn't say it is identical, but in each case it is from the Chief Clerk of the Treasury Department. [6]

THE COURT: The Court didn't have in mind whether different individuals were involved.

MR. HILE: Oh yes, it is the same.

THE COURT: The objection on the ground of authentication will be overruled.

MR. SIMON: I wish, if your Honor please, to make a further objection to 110-G, 110-H and 110-I for the reason that—and upon the ground that these are returns which the defendant is under the law required to make, and that they were required to be made subsequent to the return of the indictment in this case, and that their reception in evidence in this case would be in violation of the defendant's constitutional rights against self-incrimination, 4th and 5th amendments to the constitution of the United States.

THE COURT: Overruled.

MR. SIMON: Exception.

THE COURT: Exception allowed. They will be admitted.

(Income tax return for the years 1932 to 1938 inclusive, and 1939 were admitted in evidence as plaintiff's exhibits 110-B to 110-I inclusive.)

MR. SIMON: May it be understood that my objection, you Honor, goes to each of these separately?

THE COURT: Yes, it may be so understood and the record will so show.

MR. SIMON: Exception.

THE COURT: 110 all admitted.

MR. SIMON: May I add to the grounds of the objection to the last three, that the returns made for period subsequent to the return of the indictment are immaterial, as pertaining to the issues? [7]

THE COURT: Yes. Those grounds will be considered by the Court. Exception allowed.

4. The District Court erred in permitting the witness, Ernest A. Troeger, to testify on behalf of the Government, as follows: Over the objection of the defendant appellant. That said testimony related to incidents which happened approximately 14 years before the alleged violation of the postal laws, as set forth in the indictment; that said testimony was incompetent, immaterial and too remote and the only purpose for said testimony, apparently was to show a similar scheme and device.

Q. Mr. Troeger, I think when we left off we were speaking about what, if anything the defendant Meyers said to your father in your presence, relative to employment. Was there such a conversation?

A. Yes.

Q. Do you recall when this was?

A. At the time that contract was signed, about employment, and previous to that and thereafter.

Q. Have you refreshed your recollection by that contract plaintiff's exhibit——

A. Yes, Sir.

Q. What is the number in red up at the top there?

A. 108.

Q. And what about the dates of the conversations, as you have them in mind?

A. Well, he made this contract and told Dad——

MR. SIMON: Well now, just a minute; That is not responsive to the question, if the Court please. You asked him, as I understand it, counsel, what was the date of the conversation with reference to the date of this contract.

MR. HILE: No, I didn't. I asked him what the dates of [8] the conversations were, and to refresh his recollection by the contract.

A. He promised Dad that he would——

MR. SIMON: I object. That is not responsive to the question.

THE COURT: What date was this?

A. January 22, 1920.

Q. (By MR. HILE): What, if anything, did Dr. Meyers say to your father relative to employment?

MR. SIMON: If the Court please, if this is conversations in the course of the preparation of this contract, then I think the conversation is incompetent under the parole evidence rule.

MR. HILE: The parole evidence rule has nothing to do with this situation. We are not trying to prove this contract from a legal standpoint.

THE COURT: The Court fully understands the contract involved.

MR. SIMON: My point, your Honor, is if the negotiations about employment are material, then it seems to me the best evidence and the

have referred, I will hand it to your Honor. It bears, I think, upon other issues in the case, as to what the occupation of the defendant was in reference to being a financier at this time.

THE COURT: Can the witness inform the Court as to when these matters came to an end?

A. In 1923.

THE COURT: The contract bears date 1923?

A. That is right. That is when the whole thing terminated. That was the final settlement.

THE COURT: The objection will be overruled. This line of evidence will be admitted with limitations. The jury is instructed, of course, that it is admitted not to prove any issue in this case, other than the bearing it might have, if any, upon the element of intent, which is an important element in this case. An exception allowed.

Q. (By MR. HILE): Going back to my question, Mr. Troeger, it was: What, if any, conversations were had by the defendant Meyers in your presence, either with yourself or with your father, or both, concerning employment? [11]

A. Dad was to be employed——

MR. SIMON: Just a minute; I will object to that for the reason and upon the ground that these conversations apparently antedated a written contract, and the written contract was signed and reduced to writing. There isn't any claim that I have heard yet that there was any fraud; that the man who signed the contract did not understand its terms and conditions.

As I understand it, even in a civil case, under those circumstances, the contract which was excluded yesterday is immaterial, fixes the term of the employment. Under those circumstances I don't believe that this witness, nor even the man who signed this contract, can say that he was told that the terms of the contract were to be something other than the solemn, written instrument of the parties at the time. And I object to it as incompetent.

THE COURT: The objection will be overruled and exception is allowed. Proceed.

A. The conversation was along the line,— Dad at that time was 70 years old, and he told him, he says, "Don't worry about a thing. You will always have a job. You will never need to worry about anything. Just leave everything to me. Do this the way I want to go through with it, and you will always have plenty of money, and there will be nothing for you to worry about."

Q. (By MR. HILE): With reference to this agreement, 108 for identification, what is that, if you know?

A. This is a contract for employment for a period of two years.

Q. Do you recognize the signature thereon?

A. Yes, sir. It is signed "Translux Company, Incorporated, by H. Harry Meyers, Vice-President."

THE COURT: The question was: Do you recognize it? [12]

A. Oh, yes.

MR. SIMON: I object to this line of testimony, if the Court please.

THE COURT: The Court has indicated its position on the matter, but of course it doesn't mean that we are going to try out the difficulties that arose in that past period of time.

MR. HILE: No, your Honor, I am not going into that phase of it.

* * * * * *

Q. And did you have any conversations with the defendant Meyers relative to the formation of other corporations, that is corporations other than the original company?

A. Yes.

MR. SIMON: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

MR. SIMON: Exception. [14]

* * * * * *

Q. And with reference to the exhibits here bearing upon the collection of the notes, that is 103, 104, 105 and 106, I will ask you what, if anything, you did in connection with the collection of the notes referred to in those letters?

A. I went to the bank and tried to get them to discount them.

MR. SIMON: Now, I object to that and move that the answer be stricken, your Honor. We are certainly not bound by the activity of this man with third persons.

THE COURT: The objection will be overruled and motion denied.

MR. SIMON: Exception.

Q. (By MR. HILE: Were you successful or not?

MR. SIMON: I object to that as irrelevant and immaterial.

MR. SIMON: Exception.

Q. (By MR. HILE): Were you successful or not?

MR. SIMON: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

A. The bank wouldn't discount this note without an endorser.

MR. SIMON: I move that that last portion of the answer be stricken as hearsay, incompetent for any purpose, and I ask that the jury be instructed——

THE COURT: Motion denied.

Exception allowed: Let's proceed. [15]

Q. You didn't raise any objection to the fact that this contract provided that the agreement should cease on the 31st day of January, 1922?

A. I did not.

Q. And despite your objection, despite the language of this contract, which you perfectly

understood and your father understood, your father signed this contract and acknowledged it before a Notary Public?

A. That is true.

Q. And at the time he signed it, he knew that it contained those provisions about agreeing to perform the services to the satisfaction of the first party, and also that the employment was to terminate on the 31st day of January, 1922?

A. Yes, that is true.

MR. SIMON: I renew my motion to strike the testimony with reference to these oral conversations.

THE COURT: The motion will be denied and exception allowed.

5. That the District Court erred in admitting in evidence, over the objection of defendant-appellant, that the same was incompetent, immaterial, irrelevant and hearsay, Government's Exhibit 95 for identfiication, being a volume describing the history of the construction of the Golden Gate Bridge, purportedly compiled under the direction of Joseph B. Strauss, and at the time said Exhibit 95 for identification, was offered in evidence, the following testimony was given:

Q. Handing you what is marked as Government's 95 for identification, I will ask you what this is if you know, Mr. Felt:

A. That is the final report made by Mr. Strauss, Chief Engineer, at the completion of project. [16]

Q. Is that an official report put out by the District?

A. Yes. It was authorized and paid for by the District.

Q. That constitutes an official report on the things it purports to report?

A. It does.

MR. HILE: I offer that in evidence, if the court please.

MR. SIMON: I would like to see it.

Q. (By MR. HILE): With respect to the matter of a bridge bond election, Mr. Felt, the information was set up by the district, the Golden Gate Bridge District?

A. That is correct.

Q. And do you know what, if anything, the defendant Meyers had to do with that?

A. I know of nothing.

Q. Did you at any time ever hear that the defendant Meyers had anything to do with the Golden Gate Bridge?

MR. JOHNSON: I object to that as repetition, your Honor.

THE COURT: He may answer.

A. At what time? What period of time do you refer to?

Q. Well, I am referring to the whole period of time, as to whether or not you heard anything that was said whereby he was purported to be

connected with the Golden Gate Bridge construction?

A. No.

MR. HILE: I have no further questions, subject to this exhibit, your Honor.

THE COURT: Any objection, Mr. Simon? [17]
MR. SIMON: Yes, your Honor. I object to it upon the ground that it is incompetent and hearsay and it is irrelevant and not material to any issue in this case.

THE COURT: What is the purpose of the offer?

MR. HILE: The purpose of the offer is to show by the official report of the District, through Mr. Strauss, who the persons were who were connected with the bridge, as shown by the official report.

THE COURT: In that the defendant's name

MR. HILE: Does not appear.

THE COURT: The objection will be overruled and exception allowed.

The final report by Mr. Strauss admitted in evidence and marked plaintiff's exhibit 95 (1265-1266.)

6. That the District Court erred and abused its discretion in unduly and improperly restricting the cross-examination of the witness, John S. Swenson, called on behalf of the Government, in that the Court arbitrarily refused to allow the cross-examination of said witness to establish the animus and bias of

the witness, Swenson. The following proceedings took place:

Q. Mr. Swenson, when the Grand Jury was in session over here in Tacoma in the fall of 1937, and it was rumored that they were considering an indictment in this case——

MR. HILE: I object upon the ground that the question shows the proceedings of the Grand Jury and there is nothing that would warrant—

THE COURT: Let counsel finish his question.

Q. (By MR. SIMON): Isn't it true that there were literally hundreds of people who came to this building and [18] asked permission to appear before the Grand Jury and isn't it true that you told them that you assumed the responsibility of telling them that they couldn't go before the Grand Jury to testify in opposition to the issuance of an indictment in this case?

MR. HILE: I object to the question upon the ground that what the Grand Jury does is entirely up to the Grand Jury. It has no bearing on this case. We are trying the cause on the evidence here.

THE COURT: Objection sustained.

MR. SIMON: Exception.

Q. Mr. Swenson, is it true that you were in the District Court of the United States for the Western District of Washington, Southern Division, Seattle, before the Honorable Lloyd Black on the 26th day of November, 1941, in the proceedings in this cause when the defendant, William Markowitz made application for a stay of execution for sixty days, and when there was presented to the District Judge, Black, a com-

munication from the Attorney-General of the United States recommending that——

MR. HILE: Just a moment, you Honor. I don't see where this has any bearing on the case at all, what happened in proceedings as against these other defendants in 1941 in connection with this case, unless counsel assures us it is something in reference to the defendant here.

MR. SIMON: I would like to complete the question. I will complete it in the absence of the jury if the Court has any notion that I am saying something that is improper.

MR. HILE: I ask that the jury be excused so that we can go into this matter.

THE COURT: The Court does not want to take the time to send the jury out time after time. Do you expect to follow that up with other matter. [19]

MR. SIMON: No, this is going to be my last question of the witness, I think, as far as I now know, and I think it is proper as indicating his attitude.

MR. HILE: I think this should be out of the the presence of the jury, because I was there also and I know what occurred.

MR. SIMON: I have got a stenographic transcript of what occurred and I think it is relevant.

THE COURT: The jury may step out into the hallway for a few minutes.

(Whereupon the jury was excused and the following argument was had out of their presence and hearing.)

MR. SIMON: I offer to show by the testimony of this witness and I believe that he will answer if allowed to have the question put to him, that on the 26th day of November, 1941, when there was pending in this cause an application of the defendant William Markowitz for a stay of execution for a period of sixty days to allow the Attorney-General, through the office of the Pardon Attorney, to make an investigation of the defendant's claim of innocence, lest there be a possible miscarriage of justice, because the defendant had never produced a defense witness upon the prior trial; that when the United States Attorney, pursuant to directions of the Attorney-General of the United States, told the District Judge that it was the recommendation of the Department of Justice that such stay of execution be granted, this witness urged that the Court not grant the request for a stay of execution.

MR. HILE: Now, what possible bearing has that on this case against this defendant?

What happened was we were instructed by the Attorney-General to make such a recommendation. We told the Court [20] that upon instructions of the Attorney-General we were making such and that is all there was to it. What has that got to do with the guilt or innocence of this defendant, Mr. Meyers? Not one iota.

THE COURT: Unless it goes to the animus of the witness.

MR. SIMON: That is exactly our point.

MR. HILE: Well, we were all of the same view, that the Court shouldn't do anything and the Court didn't.

MR. SIMON: The point is that this man violated—at any rate went contrary to the instruc-

tions of the Department of Justice of the United States.

MR. HILE: He wasn't working for the Department of Justice. He was not in that capacity at all. He was then a postal inspector and was not connected with the Department of Justice.

MR. SIMON: A different uniform now.

MR. HILE: Because an Assistant Attorney-General or somebody else writes a letter to us telling us to make such a recommendation, has no bearing upon Mr. Swenson, who was working for the Postal Department, and was not under the direction of the Attorney-General. The stay of execution was opposed not only by him but by all of us.

MR. SIMON: Now, that is not true. You know that your chief stated in view of the direction of the Attorney-General he was required to remain silent.

MR. HILE: That is right. But what is the implication? We were opposed to it and that is the fact.

MR. SIMON: The implication is that you refused to carry out the order of the Attorney-General of the United States.

MR. HILE: No, not at all. The implication was we were giving it to the Court, and that is what we did.

THE COURT: I think, Mr. Simon, I will have to sustain the objection to this line of inquiry. [21]

THE COURT: You may make your offer if you want to further complete your record.

MR. SIMON: Your Honor, I offer to show that at the time when, by direction of the Assistant Attorney-General of the United States in charge of criminal prosecution, Mr. Wendell F. Berge, the United States Attorney's Office in this District, was directed, in the event that Mr. Markowitz should make application for a stay of execution, to recommend to the Court that the stay be granted to the end that the Pardon Attorney would make a complete investigation with reference to the claim of innocence of the defendant, Markowitz, lest there be a miscarriage of justice.

And I offer to show further, your Honor, that upon that occasion the Court stated as follows: "I am assuming that from what was said by Mr. Swenson in Tacoma that it is his intention to oppose probation. Is that still his position?"

I will show that he had opposed a similar thirty-day stay—this was a request for a continuance of sixty days—both of which had been recommended by the Attorney-General.

"Mr. Swenson: Yes, your Honor, it seems to me that there has been an unusually long delay in this case up to this time. The case started in the early part of 1934—that is the scheme started in the early part of 1934. My investigation started in the early part of 1936, and the indictment on which the trial was had was not returned until September 2, 1938. The sentences were imposed on August 29, 1939 and it took the Court of Appeals a long time to hand down that descision, and since that time the matter has been before the Supreme Court, and the Supreme Court decided it was not a cause that they were warranted in interfering with. I thing there has been a much longer delay than is usual or [22] warranted."

"THE COURT: I am assuming, speaking for yourself alone, you feel that the request contained in the telegram of the Assistant Attorney-General for a sixty-day further stay, in the event probation is denied, should not be followed by the Court?"

"MR. SWENSON: My recommendation would be that the sentence be made effective as soon as practical."

THE COURT: Do you object to that offer?

MR. HILE: I do object, your Honor.

THE COURT: The objection will be sustained and exception allowed:

MR. SIMON: And the point to which that is directed, your Honor, is that the matter of the selection of witnesses and the matter of producing or withholding evidence has throughout this case been in the almost exclusive control of this man who has by this course of conduct indicated his animus and bias.

MR. HILE: That statement is absolutely denied. It has been within my discretion that witnesses would be called and what would not be called.

THE COURT: The Court is familiar with proceedings before a Grand Jury and will take judicial notice of the fact that the Grand Jury is an arm of the court. The Attorney attending upon them, the United States Attorney, the Assistant Attorney or whoever is representing him, or if it is the Postal Inspector, if the postal laws are involved, to present the facts such as they find them, and to follow the instructions of the foreman of the Grand Jury, members of the Grand Jury of the United States Attorney. And

I cannot indulge any presumption that any of the parties, including the Postoffice Inspector, did anything more than their duty in this case. [23]

Bring in the jury.

MR. SIMON: Exception.

THE COURT: Yes.

7. That the District Court erred in admitting the evidence, over objection of defendant-appellant. That the same was incompetent, Government's Exhibit 23, being a letter purportedly signed by the witness, Hurwitz for Luther Weden and purports to rescind a resolution previously passed by the Northwestern Gas & Oil Association, and the following proceedings took place:

Q. '30 or '31. Now, referring to the resolution which appears on this exhibit of the Northwest Gas & Oil Association, I will ask you whether or not that resolution was ever rescinded, if you know?

MR. SIMON: I object to that as not proper redirect examination.

THE COURT: Overruled. Exception allowed.

MR. SIMON: Exception.

A. Yes, sir.

Q. (By MR. HILE): And when, if you recall?

A. I believe in November, 1935.

Q. Handing you what is marked as plaintiff's exhibit 23, I will ask you if you recognize that as being a photostatic copy of anything that you know of?

A. Yes, sir.

Q. And what?

A. It is a photostatic copy of a letter that was sent.

THE COURT: Just a little louder.

MR. HILE: Yes, please.

A. It is a photostatic copy of a letter sent to the Peoples Gas & Oil Company, Peoples Gas & Oil Development Company, rescinding the resolution. [24]

Q. And who signed that letter, if you know?

A. I signed that with the name of Luther Weden, who was chairman of the committee.

Q. And how did you happen to sign it as his name?

A. Because he couldn't wait, and with his permission I signed it.

Q. I didn't hear your last statement.

A. With his permission, I signed it.

Q. He authorized you to sign it?

A. Yes, sir.

MR. HILE: I offer this in evidence, your Honor.

MR. SIMON: We object to it as incompetent.

MR. HILE: I might state that the original of that is in the Court's custody, and I could substitute the original if it is necessary.

THE COURT: I don't understand the objection is based on the fact that it is not the original.

MR. HILE: I don't understand that he did.

MR. SIMON: Not at all. I am not raising that question your Honor.

Q. (By the Court): When did you say that the resolution was rescinded?

A. I believe it was in November, 1935, or 1936.

THE COURT: This letter bears date March 17, 1936.

A. Then it was March. I don't remember.

THE COURT: 1936

A. Six or seven years ago.

MR. SIMON: I call your Honor's attention to the fact that admittedly, according to counsel's opening statement, the lease sales had terminated at the time this letter was written.

MR. HILE: Is that dated March, your Honor? [25]

MR. SIMON: Yes, March, 1936.

MR. HILE: April 15 is the date the sales stopped.

THE COURT: It will be admitted in evidence. Exception allowed.

Photostatic copy of the letter admitted in evidence and marked Plaintiff's Exhibit 23.

Said Exhibit 23 reads as follows:

Northwest Oil and Gas Association
312-313 McDowall Building
Seattle, Washington
Phone Eliot 8363

March 17, 1936

No. 15187

PLAINTIF EXHIBIT 23

ADM Oct - 8 1942

Peoples Gas and Oil Development Co.
Peoples Gas and Oil Co.
Seattle, Wash.:

Gentlemen:

You are herewith notified that the Executive Committee of this Association has been instructed to withdraw its resolution of March 19, 1934 offering cooperation to the Peoples Gas and Oil Development Co.

At the time this resolution was adopted our committee was given to understand and pledges were made thereto that your companies had a legitimate program looking to the development of the petroleum resources of this state. It has become obvious, through the repeated misrepresentations made by your agents, and by the malicious practices of your officials, that your conduct here is not in accord with the ethics of honest administration required by this association, nor with the spirit of cooperation in which it is organized. [26]

Your immediate return of the letter conveying the resolution is requested, and you are herewith formally notified that its use in any sales literature or campaign is forbidden, and that proper steps will be taken to enforce these instructions, should you not willingly accede.

Yours very truly,

NORTHWEST OIL AND GAS ASSOCIATION
LUTHER WEEDIN
Luther Weedin, Chairman
Executive Committee.

LW ET [27]

8. That the District Court erred in rejecting Defendant's Exhibit A-122 for identification, said letter being dated June 23, 1934, and signed by Ward B. Blodgett, and addressed to W. A. Broome.

Q. (By MR. SIMON): Calling your attention, Mr. Blodgett, to Exhibit A-122 and A-123, I will ask you whether A-122 is the letter you wrote on or about the date it bears, to Mr. Broome and whether A-123 is the answer that you received to it?

THE COURT: What is your answer, Mr. Blodgett?

A. Yes, I remember those letters.

* * * * * *

A. Yes, that is the letter.

MR. SIMON: I offer this exhibit in evidence.

MR. HILE: I object to 122 and 123 because it doesn't bear, in my opinion, at all upon the Advisory capacity, which we have mentioned.

THE COURT: Pass them up.

Q. (By MR. SIMON): Mr. Blodgett, calling your attention to Defendant's A-125 for identification, I will ask you whether that is a reply that you wrote, at the request of whoever——

A. (Interrupting): Broome.

Q. ——of Mr. Broome, after an examination of this file?

A. Yes, it is.

MR. SIMON: I offer A-125 in evidence.

MR. HILE: With respect to 124, I have no objection.

THE COURT: It will be admitted in evidence.

Letter from Broome admitted in evidence and marked Defendant's A-124.

MR. HILE: With respect to A-125, I have not had an [28] opportunity to read it yet.

Q. (By MR. SIMON): Mr. Blodgett, with reference to A-125, I will ask you if that was rendered after you requested your name be removed from the advertising matter.

A. Yes, it was.

MR. HILE: I object to it on the ground that it is not within the scope of the Direct Examination.

THE COURT: I didn't hear any questions about that.

MR. HILE: A-125 has been identified by the

witness as the reply he wrote to Mr. Broome. I asked him whether it had been written before or after he advised them to quit using his name and he said after. So, thereupon I assume it is not within the scope of our examination. This is opening the field. I have no objection to this witness either being called now as a witness for the defense upon this other aspect, or holding him here, but our case has developed sufficient as to the geology, I think, and I think they should make him their witness, if they wish to pursue the matter or replies to inquiries from a geological aspect.

MR. SIMON: I think that bears on the proposition that he was a member of the——

THE COURT: 122 and 123, Mr. Simon, do not bear upon that. They might be competent in defense but they would not bear upon the issue of whether he authorized his name to be used or not to be used. The objection is sustained as to that.

Letters previously marked for identification A-122 and A-123 were rejected.

Said Exhibit A-122 for identification, reads as follows: [29]

WARD H. BLODGET
342 Petroleum Securities Bldg.
714 West Tenth Street
Los Angeles, California

June 23, 1934

No. 15187

DEFENDANT EXHIBIT A 122

Not Adm.

Mr. W. A. Broome, President,
People Gas & Oil Development Company,
Suite 410, Fourth & Pike Bldg.,
Seattle, Washington

My dear Mr. Broome:

An old friend of mine, who is in the oil business, and has spent some time in Seattle recently, called me on the phone the other day and told me, in a sort of facetious way, that he was surprised to find that I was aiding in a program to put the State of Washington in the business of distributing gasoline. When I pleaded ignorance as to what he was talking about, he told me that he had seen my name used in connection with publicity about an oil and gas prospecting venture in Washington and that the promoters seemed to be very definitely linked up with the sponsors of an initiative petition to permit the State to distribute gasoline. He said that he had seen newspaper clippings quoting you as saying that the major oil companies were gouging the public on price and that statements over the radio lead him to conclude that I was part and parcel with the group endeavoring to put over the initiative.

I am wondering now if this friend of mine knows what he is talking about. I cannot, for my part, see [30] that the success of this initiative would be of any aid to your planned operations in Washington as a matter of fact, I should think that it would be harmful in the long run. I understand here that all of the independent companies of California distributing gasoline in Washington are against the bill, and I can't help but feel that it will do us no good as a potential producing oil company to foster the measure.

It probably is true that the price of gasoline

is too high in the northwest, but I should think that if the State goes into the business on its own hook it would create a situation still worse and would not help us if you succeed in developing oil.

Of course I am so far away that I do not know all of the angles which you have to face, but I hope you do not go too strong in your propaganda against the major oil companies. I can feel the reactions against myself clear down here because my name has been mentioned in connection with your company and of course you know my business is nearly all with the large oil companies.

Let me know the true situation so that I can combat any adverse criticism down here.

Has the company of which Roberts and you and I participate been organized?

With best wishes for successful development I remain

Very truly yours,

WARD B. BLODGET

WBB:DD [31]

9. The District Court erred in rejecting Defendant's Exhibit A-123 for identification, being letter dated June 26, 1934, written by W. A. Broome to Ward B. Blodget, being in answer to Defendant's Exhibit A-122 for identification, which letter reads as follows:

"June 26, 1934

Mr. Ward B. Blodget Esq.
342 Petroleum Securities Bldg.
714 West 10th Street
Los Angeles, California

My dear Mr. Blodget:

I was glad to receive your letter of June 23 and hasten to let you know the true situation.

Neither my company or myself have ever been linked up in any way with the initiative petition, the sponsors of which seek to permit the state to distribute gasoline. My personal attitude is precisely the same as yours in the matter, in that I fail to see how it would benefit etiher major or independent oil companies. I have always adopted an attitude diametrically opposed to either participation in or interference with private enterprise by either state or federal officials. I believe there is altogether too much damnable paternalism on the part of petty politicians now — without adding to the situation.

The price of gasoline is undoubtedly very high throughout this area, but it seems to me that the only thing that will tend to cure that situation is the establishment of commercial production within the confines of the state.

Regardless of any quotations charged to me, I would welcome the presence of Mr. Kingsbury himself at any of the meetings or public gatherings which I have addressed up here. I have never criticized the major companies, on the contrary, [32] I complimented them very highly on the very business-like manner in which they have protected their marketing interests here. I can see no necessity for hammering the major

companies in order to build interest in our project, as the interest is extremely keen now.

I hope that the foregoing will tend to clarify the situation for you as I should deeply regret any action of mine that might, even inadvertently, cause loyal friends like yourself any embarrassment or put you in a position where an explanation was required.

Answering your last question, the status of the participation in my interest is not yet settled, but I believe it will not take long to clear it up after Dr. Meyers returns here—which I anticipate will be in the next few weeks.

I have not as yet acknowledged the receipt of the last letter you sent me in answer to my inquiry as to geological services. I have the situation in mind, however, and thank you most sincerely for the suggestions.

With kindest regards, old friend, and best of good wishes,

Yours very sincerely,

PEOPLES GAS AND OIL DEVELOPMENT CO.

William A. Broome

President

WAB:LFN"

The offer and testimony in connection therewith have been set forth under assignment No. 8.

10. The District Court erred in rejecting Defendant's Exhibit A-131 for identification, which is a

carbon copy of [33] the letter, dated June 1, 1934, addressed to the witness, Dwight C. Roberts, written by W. A. Broome, said letter reading as follows:

"June 1st, 1934

Mr. Dwight C. Roberts
2000 West 12th Street
Los Angeles, California.

My dear Pop:

I wrote you under date of April 25th, but up to now have received no word from you, consequently I am compelled to believe that you failed to receive my letter. For that reason, I am enclosing copy of it. Otherwise, this letter might not make sense.

Things are moving along very nicely and under the most favorable of auspices and everything is being run as clean as a "hounds tooth."

We are going over specifications at this time for the putting in of a heavy duty standard rigging. I wish you would let me know immediately if you know of a first class cable equipment that can be obtained in California. I have one outfit in mind in Wyoming which we might be able to use, but in California where cable is not being used much any more. I would appreciate a response from you on this.

I am expecting and hoping to be able to turn you loose on some real work up here very shortly, providing your other duties do not render your services unavailable, and wish you would let me know how things are shaping up for you so that I shall know what to do. I also wish you would let me know what those services are going to cost me over periods reaching from one month up.

I had the pleasure of a visit from your friend Mr. Curtiss, Geologist, on Monday of this week. He brought a friend of his with him and visited for some considerable [34] time. He is on his way to Alaska. We had quite an interesting talk together in which he told me of the circumstances on which he parted from you some two weeks previously. I wish I had been with you but I am glad to know that you are still as capable as ever along those particular lines.

Mr. Sheldon Glover, State Geologist in charge of Non-Metallic Minerals Division for the newly created State Natural Resources Conservation Board here, visited the well with me about ten days ago. We are having splendid cooperation from him and his chief, Dr. Culver. We are running 12½" casing in the hole and the prospects look tremendously interesting.

I had a fine letter from Kim Hollins a few days ago and I am asking him to please let me hear from him at his earliest convenience.

Hoping to have the pleasure and privilege of seeing you up here very soon, please believe me to be as ever,

Your sincere friend,

WILLIAM A. BROOME

WAB:FB"

Q. (By Mr. Simon): Mr. Roberts, you have examined Defendant's Exhibit for identification No. A-131?

A. Well, I think so. I don't remember the number. Is that the letter I just looked at?

Q. Yes.

A. Let me look at it again so as to be sure.

Q. Do you recognize that as a carbon copy of a letter you received on or about the date it bears, from Mr. Broome?

A. Yes.

MR. SIMON: I will offer that in evidence.

MR. HILE: I would like to ask the witness a question.

THE COURT: Very well. [35]

Q. (By MR. HILE): Is that Exhibit A-131 to which you have just looked received in connection with or have any bearing on your acting as a member of the geological committee?

A. It has a bearing on my objection to being placed on an advisory committee, which I did not know about until about this time, almost three years after this first letter that has been spoken of.

MR. HILE: I am wondering if you do not misapprehend the instrument. I wish you would look at it again, please.

A. This is the one of the year before, isn't it? I remember this letter, yes.

Q. Does that have any connection with your acting or being requested to act on any geological advisory committee?

A. No.

MR. HILE: I object then on the ground that it does not have any bearing by its contents, as far as I can see or ascertain.

MR. SIMON: Calling the Court's attention to the fourth paragraph of the letter.

THE COURT: I still think, Mr. Simon, it is rather remote from the direct examination and goes pretty far afield in the field of cross examination. I sustain the objection and allow an objection.

MR. SIMON: May I inquire from the witness?

THE COURT: I thought you had.

MR. SIMON: Well, abuot the specific provisions of the letter, whether or not Mr. Broome did not discuss with him in this letter the matter of his employment in connection with the geological work of the drilling of Donnie Boy well and whether that is not—

MR. HILE: Even so—

MR. SIMON: That is what I thought. [36]

MR. HILE: I thought the Court had ruled upon it.

THE COURT: You may ask him that question. Proceed and ask him that question.

MR. HILE: What was the question?

MR. SIMON: I am asking the witness whether the fourth paragraph of this letter did not refer to the contemplated employment at that time, June, 1934, of this witness in connection with the performing of engineering services of this witness on the drilling of Donnie Boy?

A. Well, he merely asked me, "I wish you would let me know how things are shaping up for you so that I shall know what to do. I also

wish you would let me know what those services are going to cost me over a period reaching from one month up." I don't recall that I ever answered this letter. But there is nothing in here about the agreement. He is talking about remuneratoin here, aside from the agreement.

Q. (By MR. SIMON): What I am trying to inquire from you, Mr. Roberts, whether that letter did not inquire about employing you on this job, in connection with this job of drilling Donnie Boy in June, 1934 and whether or not that fourth paragraph of the letter does not refer to that.

MR. HILE: I object to that.

THE WITNESS: It doesn't say anything about Donnie Boy here.

MR. HILE: It doesn't say anything about an advisory geological committee.

THE COURT: I think I shall sustain the objection to any further questions on that. The specific issue is framed by the indictment here, that the Peoples Gas & Oil Development Company had in its service a highly qualified advisory board composed of prominent petroleum geologists and engineers, and that such board was composed of the following: Dwight C. [37] Roberts, George H. Stone and George C. Blodget, whereas in truth and in fact, said defendant well knew at said time they did not. Now, that is the issue.

MR. SIMON: That is right.

THE COURT: Anything that throws light upon the issue, the Government has seen fit to place this witness upon the stand and ask him, since he is one of the main persons in the indictment, if he was on the advisory board. He

has answered in the negative. Now, anything that will tend to refute that is competent; but beyond that as to the relationship that might have existed in times past, unless they throw light on that issue, they are not proper as cross examination.

MR. SIMON: My position, if the Court please, is that these contracts under which Broome was entitled to his services, plus this letter which inquired about his assuming active duties in connection with the geographical work on this particular project, are competent on the proposition of whether or not the statement of these men in this perspectus that they had arranged for the services of——

THE COURT: The statement does not say that they have any arrangement. The statement recites a definite fact, not something in the future.

MR. SIMON: It is not prospective.

THE COURT: I don't think we will get anywhere by further discussion of it.

MR. SIMON: Exception, your Honor.

Document previously marked for identification, Defendant's A-131 Rejected. [38]

14. The District Court erred in refusing to grant e defendant-appellant's motion for a new trial.

Respectfully Submitted,

BERTIL E. JOHNSON,

torney for H. Harry Meyers, Defendant-Appellant herein, 1205 Rust Building, Tacoma, Washington.